PONNAN SUBRAMANIAM

v.

TENAGA NASIONAL BHD

HIGH COURT MALAYA, JOHOR BAHRU
ABDUL MALIK ISHAK J
[CIVIL SUIT NO: 22-575-1987]
18 DECEMBER 1997

LABOUR LAW: *Employment - Disciplinary proceeding - Whether establishment committee acted fairly at disciplinary hearing - What constitutes procedural fairness - Whether justified to demote plaintiff*

LABOUR LAW: *Employment - Dismissal - Whether bad in law to dismiss plaintiff - Whether plaintiff could seek redress to reinstate*

The plaintiff was an employee of the defendant and he was alleged to be involved in the illegal supply of electricity to six squatter-houses. At the disciplinary hearing held to enquire into the misconduct of the plaintiff, the plaintiff had admitted to the misdeed but had denied the illegality of his action for he had not known that the houses were squatter-houses. He was demoted in rank. Subsequent to this, the plaintiff failed to report to work and thus a show cause letter was issued to him. The plaintiff failed to respond to the show cause letter. As a result, a second disciplinary hearing was convened and, in the plaintiff's absence, he was dismissed for not reporting to work.

The plaintiff contended that the first hearing was not conducted fairly and sought to declare that it was bad in law. This contention was based on the following: that he was not accorded the right to require all documentary evidence made against him to be made available; that he was not accorded the right to require all those who have prepared or made complaints or carried out investigations against him to be made available; that, in any case, he cannot be expected to have understood these two rights; that he was stifled from defending his case at the disciplinary hearing since all those who sat in judgment were senior officers; and that he was not assisted by anyone at that hearing by way of an explanation. Apart from this, with reference to the second disciplinary hearing, it was further suggested that it was bad in law to punish the plaintiff twice.

The defendant submitted that the plaintiff was given all the opportunity to defend himself during the enquiry and the Establishment Committee (the 'EC') had ensured that the plaintiff had understood what was going on. The court had to decide: (i) whether there was procedural fairness in the disciplinary proceedings; and (ii) whether it was bad in law to discipline the plaintiff twice.

Held:

[1] The categories of procedural fairness are not closed and the procedure adopted in a particular case may be fair or otherwise according to its own facts. The rules of natural justice have traditionally been regarded as comprising the rules *audi alteram partan* and *nemo judex in causa sua*. These rules would apply in different fact situations. It would apply to require the maker of a decision to give prior notice of the decision to the persons affected by it and opportunity accorded to those persons to make representations and to disqualify the decision maker from acting if he has or she has a direct pecuniary or proprietary interest or that the decision maker be or might otherwise be biased. There is a basic duty to act fairly and it simply means to refrain from any abuse of discretion.

[1a] In the present case, there was fairness exercised by the Establishment Committee (EC). The enquiry was conducted in impeccable style which came within the purview of the concept of natural justice. The plaintiff had infringed the rule against unauthorised work which resulted in the first disciplinary hearing.

[1b] There was no appeal against the reduction in rank by the plaintiff although he had the benefit of legal advice. The conclusion arrived at would be that the plaintiff had accepted the decision of the EC.

[2] The declaratory reliefs sought by the plaintiff were equitable in nature and the courts of equity are courts of conscience. It was the duty of the plaintiff in seeking these declaratory reliefs to be honest and forthright but there were marked inconsistencies in the evidence of the plaintiff. The rule is that if a witness had lied on one or two points, it does not necessarily follow that his whole evidence should be rejected. But it is the duty of the court to sieve the evidence and to ascertain what the points of evidence are that tend to incriminate the accused which should be accepted. The inconsistencies in the evidence of the plaintiff could not be reconciled with the mass of evidence produced in the course of the trial.

[2a] The reason for the dismissal of the plaintiff at the second disciplinary proceeding was the refusal of the plaintiff to work. The opportunity to be heard does not mean the right to be heard orally and the question of legal representation did not arise at all and no breach of natural justice could flow from it.

[3] Natural justice is a phrase attributable to certain fundamental rules which are crucial and necessary to the proper exercise of power that they are now projected from the judicial to the administrative sphere. This phrase covers two rules: first, that a man may not be judge in his own cause and second, that a man may not be condemned unheard. There was no real likelihood of bias in the present case and the court held that justice was seen to have been done.

[4] A professional body is the best tribunal to judge the seriousness of misconduct of its members. In a similar vein, an employer, including a government is the best person to judge similarly the seriousness of misconduct of an employee.

[Case dismissed with costs.]

Cases referred to:

Associated Provincial Picture Houses v. Wednesbury Corp [1948] 1 KB 223 ***(refd)***
BBS Kanda v. Government of the Federation of Malaya [1962] MLJ 169 ***(refd)***
Board of Education v. Rice [1911] AC 179 ***(refd)***
Bushell v. Secretary of State for the Environment [1981] AC 75 ***(cit)***
Cinnamond v. British Airports Authority [1980] 1 WLR 582 ***(cit)***
LGB v. Arlidge [1915] AC 120 ***(refd)***
McInnes v. Onslow – Fane & Another [1978] 1 WLR 1520 ***(refd)***
Metropolitan Properties (FGC) Ltd v. Lannon [1969] 1 QB 577 ***(refd)***
Ng Hock Cheng v. Pengarah Am Penjara & Ors [1997] CLJ JT (19) ***(refd)***
Nijar Singh v. Government of Malaysia & Anor [1974] 1 MLJ 138 ***(cit)***
R v. Birmingham City Justice, ex p Chris Foreign Foods (Wholesalers) Ltd [1970] 1 WLR 1428 ***(cit)***
Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasokan Polis & Ors [1995] 1 MLJ 308 CA ***(refd)***
Ridge v. Baldwin [1964] AC 40 ***(refd)***
Rohana Ariffin & Anor v. Universiti Sains Malaysia [1989] 1 MLJ 489 ***(dist)***
Shaughnessy v. United States 345 US 206 (1953) ***(refd)***
Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 ***(refd)***
Tua Kin Ling v. Public Prosecutor [1970] 2 MLJ 61 ***(refd)***
Zainal Hashim v. Government of Malaysia [1979] 2 MLJ 276 ***(refd)***

Legislation referred to:

National Electricity Board of the States of Malaya (Conduct and Discipline) Rules 1983, r. 21(4), (5), (6)

For the plaintiff - Alex Charles; M/s Nur Ashikin Alex & Partners
For the defendant - S Pathmanathan (Haris Fadzillah Samin with him); M/s Mohd Akhir & Partners

Reported by Michele Saw

JUDGMENT

Abdul Malik Ishak J:

The facts garnered from the amended statement of claim as seen at encl. 37 marked as "ASC 1 to 5" may be stated briefly in these terms. The plaintiff was employed by the defendant and he held the following posts before his reduction in rank:

(1) as a general labourer from August 3, 1956 until September 31, 1960.

(2) as a trainee from October 1, 1960 until July 31, 1962.

(3) as a fault-finder (F/F) ordinary grade after completing an examination and this was from August 1, 1962 until March 30, 1972.

(4) as a F/F tingkatan khas after passing a further examination and this was a promotional post which he held from April 1, 1972 until December 31, 1977.

(5) as a juruteknik rendah, tingkatan biasa, a promotional post after he passed a further examination and he held this post from January 1, 1978 until November 17, 1984.

On 12 April 1983, the defendant initiated a disciplinary proceeding against the plaintiff on a simple charge – that of supplying electricity to six unauthorised houses at Pandan New Village, Batu 7, Jalan Kangkar Tebrau, Johor Bahru. This charge is of great importance and it will be highlighted in due course. An enquiry was accordingly held on 17 July 1984 and on that date the defendant informed the plaintiff that he was given a final warning and that he was reduced in rank from juruteknik rendah tingkatan biasa to that of a general labourer at the top of the salary scale payable to such labourer, namely, at RM360 with effect from 1 December 1984. As a general labourer the plaintiff was employed on a salary scheme of D47 that ranged from RM250 x 10 - RM360. The plaintiff held onto the notion that the disciplinary proceeding was conducted contrary to r. 22.1 of the NEB Rules and Regulations Chapter III ('the Regulations'). On the contrary there was compliance with r. 22.1 of the Regulations as the report was transmitted to the Establishment Committee (EC) chaired by Dato' Ibak bin Abu Hussin ('Dato' Ibak') and this will amply be seen in the later part of this judgment. The plaintiff also held the view that the decision of the disciplinary enquiry was perverse and void. The plaintiff alleged that the defendant by letter dated 26 May 1986 had relayed the message that the plaintiff had committed an offence and was to be punished with dismissal with immediate effect.

The plaintiff then sought for the following orders:

(a) a Declaration that the initiation of disciplinary proceedings against the plaintiff is bad in law;

(b) a Declaration that the proceedings were conducted in violation of the principles of natural justice;

(c) a Declaration that the decision of the disciplinary board reducing him in rank is bad and invalid;

(d) a Declaration that the purported reduction in rank is bad in law;

(e) a Declaration that the dismissal of the plaintiff is bad in law;

(f) a Declaration that by reason of his wrongful reduction in rank and/or dismissal the plaintiff is entitled to his original job without any loss of salary or benefits;

(g) damages;

(h) interests;

(i) costs;

(j) such further or other relief.

The amended statement of defence in encl. 39 was marked as "ASD 1 to 5" and there the defendant categorically answered all the paragraphs to the amended statement of claim.

The trial was slightly protracted and in midstream the plaintiff changed counsel. There were also attempts at settlement but they were unsuccessful.

From the brief recital of the facts there were two disciplinary proceedings instituted against the plaintiff. One resulted in the plaintiff being demoted and the other saw his dismissal. Dato' Ibak, the chairman of the disciplinary committee, explained that:

> ... the chairman of the panel that heard the complaint against the plaintiff. The Establishment Committee (EC) will sit. The Establishment Committee (EC) is appointed by the Board particularly by the general manager of the board.

and he was very sympathetic towards the plaintiff. Dato' Ibak categorically stated that had the plaintiff continued with his job after the demotion and showed his competence he would have been re-instated to his previous

position. But alas the plaintiff chose not to come to work. The evidence of Dato' Ibak elicited under cross-examination merits reproduction:

> My Lord let me say that the members of establishment committee felt sympathetic to Ponnan because of his long years of service. That's why we did not terminate his service but merely reduced him in rank on the higher scale. Had he continued his job and showed his competence we would have re-instated him to his previous position like what has been done in other cases. But Ponnan chose not to come to work at all.

The First Disciplinary Proceeding

The relevant show cause letter that sparked off the first disciplinary proceeding was the one dated 6 January 1983 as seen at p. 11 of bundle "IDP" and it was worded in this fashion:

> LEMBAGA LETRIK NEGARA, TANAH MELAYU,
> IBU PEJABAT NO: 129, JALAN BANGSAR,
> KUALA LUMPUR 22-08.
>
> LLN 15/30/5711/89 6 Januari 1983
>
> SULIT
>
> S. Ponnan,
> Pekerja No: 5711,
> Juruteknik Rendah T/Biasa.
>
> Melalui : Pengurus Daerah Kanan,
> LLN Johor Bahru.
>
> Laporan telah di terima dari Ketua Jabatan tuan menyatakan bahawa tuan telah di dapati terlibat secara langsung untuk memberi bekalan letrik kepada 6 buah rumah haram di Pandan New Village, Bt. 7, Jalan Kangkar Tebrau, Johor Bahru. Tuan juga telah menyalahgunakan jawatan yang tuan pegang pada masa itu untuk mendirikan sesalur khidmat dengan alasan ianya di buat untuk kerja-kerja penyenggaraan. Di samping itu, tuan juga telah di dapati cuba melibatkan pegawai-pegawai kanan LLN Daerah dalam usaha penyelewengan tuan itu. Perbuatan tuan yang sedemikian rupa adalah bertentangan dengan peraturan serta di pandang berat oleh Lembaga.
>
> 2. Oleh itu tuan adalah diminta untuk mengemukakan sebab-sebab mengapa tindakan tatatertib tidak harus dikenakan terhadap tuan. Jika tuan gagal berbuat demikian dalam tempoh 14 hari atau pun jawapan yang diterima didapati tidak memuaskan, tindakan tatatertib yang lebih tegas akan diambil terhadap tuan.
>
> "BERKHIDMAT UNTUK NEGARA"
>
> Sgd. (Illegible)
> (Zakiah bte Hj. Alias)

b.p. PEGAWAI KAKITANGAN (PERJAWATAN)
Lembaga Letrik Negara.

As can be seen the show cause letter dated 6 January 1983 compendiously brought home the allegations against the plaintiff and it aired the followings:

(a) that there was a report lodged by the plaintiff's head of department;

(b) that the plaintiff was alleged to be involved in the supply of electricity to six squatter houses at Pandan New Village, Batu 7, Jalan Kangkar Tebrau, Johor Bahru;

(c) that the plaintiff was said to have misused his position to erect a service pole on the pretext of carrying out maintenance work;

(d) that the plaintiff had tried, so it was alleged, to involve senior officers of the defendant.

The plaintiff replied to that show cause letter and his reply can be seen at p. 12 of bundle "IDP" which was worded as follows:

Ponnan A/L Subramaniam,
Pekerja No: 5711,
Lembaga Letrik Negara,
Johor Bahru,
Johor.

29hb January 1983

Kepada,
Tuan Pegawai Kakitangan (Perjawatan),
Ibu Pejabat, LLN,
Jalan Bangsar,
Kuala Lumpur.

Tuan,

Per: Sambungan bekalan eletrik di Lot 188 Batu 5 1/2, Jalan Tebrau, Pandan, Johor Bahru

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Saya mengaku menerima surat tuan Bil: LLN 15/30/5711/89 bertarikh 6hb Januari, 1983, pada 17 Januari 1983 dengan tangan A/A.

Saya telah di tanya daripada pemohon-pemohon sebab-sebab lewat bagi mendapatkan bekalan balik di Kg. Pandan. Selepas menyemak bill-bill cagaran di Pejabat setelah di dapati bahawa yaitu semua pemohon-pemohon telah diluluskan dan dengan sempurna, melainkan Borang LLN98 bagi jangka belum di sempurnakan.

Selepas mendapatkan kelulusan bagi keluarkan jangka itu saya sangop untuk memasang balik bagi kerja-kerja di rumah-rumah di nyatakan di atas itu.

Saya tidak tahu menahu yang rumah ini adalah rumah haram oleh kerana pemohon-pemohon itu adalah untuk mendapat bekalan balik. Semua rumah-rumah di kawasan kampong itu adalah di bekalkan dengan letrik.

Harap supaya ada di dalam pengetahuan jua adanya.

Terima kasih.

Adalah saya dengan segala hormatnya,

Yang ta'at menurut perintah,

Sgd (Illegible)
...
S. Ponnan

s.k. Pengurus Kawasan,
Kawasan Selatan,
Lembaga Letrik Nasional,
Melaka.

Pengurus Daerah Kanan,
LLN,
Jalan Yahya Awal,
Johor Bahru, Johor.

The explanation by the plaintiff was obviously not well received by the defendant because by letter dated 12 April 1983 the defendant preferred a charge against the plaintiff and that charge was worded as follows and it can readily be seen at p. 13 of bundle "IDP":

LEMBAGA LETRIK NEGARA, TANAH MELAYU,
IBU PEJABAT, NO: 129, JALAN BANGSAR,
KUALA LUMPUR 22-08.

Rujukan Kami: LLN 15/30/5711/93

12 April 1983

Encik S. Ponnan, SULIT
Pekerja No: 5711,
Buruh Am.

Melalui : Pengurus Daerah Kanan
LLN Johor Bahru.

Temutanya Oleh Jawatankuasa Perjawatan
(Badan Pengurusan)

Berhubong dengan perkara di atas, tuan adalah di arah untuk menghadiri satu temutanya dengan Ahli-Ahli Jawatankuasa Perjawatan (Badan Pengurusan) pada 20 April 1983 jam 8.00 pagi di Pejabat Pegawai Kakitangan (Perjawatan), Tingkat 2, Ibu Pejabat, Kuala Lumpur berkaitan dengan tuan terlibat secara langsung untuk memberi bekalan letrik kepada enam buah rumah haram di Pandan New Village, Batu 7, Jalan Kangkar Tebrau, Johor Bahru. Perbuatan tuan ini adalah melanggar Panduan Kakitangan Bab III, para 17.1 - 17.2.

2. Tuan adalah dibenarkan membawa seorang wakil dari kesatuan, sekira memerlukannya.

"BERKHIDMAT UNTUK NEGARA"

Sgd (Illegible)
...
(Azizah Osman)
PEGAWAI KAKITANGAN (PERJAWATAN),
Lembaga Letrik Negara.

It is pertinent to note that the inquiry scheduled for 14 February 1984 did not proceed and the letter in regard to it can be seen at p. 6 of bundle "IDP" and it is now reproduced for convenience:

LEMBAGA LETRIK NEGARA
TANAH MELAYU

Rujukan Kami : LLN 15/30/5711

28 Januari 1984

Encik Ponnan A/L Subramaniam,
Pekerja No: 5711,
Juruteknik Rendah Tkn. Biasa.

Melalui : Pengurus Daerah Kanan,
Lembaga Letrik Negara,
Johor Bahru.

TEMUTANYA OLEH JAWATANKUASA PERJAWATAN
(BADAN PENGURUS)

Memberi Bekalan Elektrik kepada 6 Buah
Rumah Haram Dengan Menipu Pihak Pengurusan

Berhubong dengan perkara di atas, tuan adalah di arah untuk menghadiri satu temutanya dengan Ahli-Ahli Jawatankuasa Perjawatan (Badan Pengurus) pada 14 Februari 1984 jam 8.00 pagi di Pejabat Pegawai Kakitangan (Perjawatan), Tingkat 2, Ibu Pejabat, Jalan Bangsar, Kuala Lumpur.

2. Tuan adalah juga dibenarkan membawa seorang wakil dari kesatuan sekira tuan memerlukannya.

Sgd. (Illegible)
(Azizah Osman)
PEGAWAI KAKITANGAN (PERJAWATAN)
Lembaga Letrik Negara.

s.k. Pengurus Daerah Kanan,
Lembaga Letrik Negara,
Johor Bahru.

Ingin dinyatakan disini perbelanjaan perjalanan tidak akan dibayar kepada wakil kesatuan.

Sila tentukan surat ini di sampaikan kepada pekerja tersebut atau sekurang-kurangnya beliau diberitahu tentang temutanya tersebut.

Pengurus Kawasan (Selatan) LLN,
Melaka.

Finally, the inquiry was fixed on 7 July 1984 and a notification to that effect was made to the plaintiff as seen at p. 7 of bundle "IDP", and for convenience it is reproduced hereinunder:

LEMBAGA LETRIK NEGARA TANAH MELAYU,
IBU PEJABAT, NO: 129, JALAN BANGSAR,
KUALA LUMPUR 22-06.

Rujukan Kami: LLN 15/30/5711/95

28 Jun 1984

Encik S. Ponnan, SULIT
Pekerja No: 5711,
Buruh Am.

Melalui : Pengurus Daerah Kanan,
LLN, Johor Bahru.

TEMUTANYA OLEH JAWATANKUASA PERJAWATAN
(BADAN PENGURUS)

PER: MEMBERI BEKALAN ELEKTRIK KEPADA 6 BUAH RUMAH HARAM DENGAN MENIPU PIHAK PENGURUSAN

Berhubong dengan perkara di atas, tuan adalah di arah untuk menghadiri satu temutanya dengan Ahli-Ahli Jawatankuasa Perjawatan (Badan Pengurus) pada 17 Julai 1984 jam 8.00 pagi di Pejabat Kakitangan (Perjawatan), Tingkat 2, Ibu Pejabat, 129, Jalan Bangsar, Kuala Lumpur.

Tuan adalah juga dibenarkan membawa seorang wakil dari kesatuan sekira tuan memerlukannya. Ingin dinyatakan di sini perbelanjaan perjalanan tidak akan dibayar kepada wakil kesatuan tuan.

BERKHIDMAT UNTUK NEGARA

Sgd (Illegible)
(Azizah Osman)
PEGAWAI KAKITANGAN (PERJAWATAN)
Lembaga Letrik Negara.

The plaintiff took exception to two letters, namely, the one dated 12 April 1983 and the other dated 28 June 1984 and through his counsel, Mr. Alex Charles, it was argued that the plaintiff appeared to have been found guilty and demoted to "buruh am" even before the commencement of the inquiry that was scheduled to take place on 17 July 1984. These two letters were said to describe the plaintiff as "Buruh Am." This submission was insignificant and it paled into oblivion as the show cause letter dated 6 January 1983 as reproduced in the early part of this judgment appropriately described the plaintiff as "Juruteknik Rendah T/Biasa." This show cause letter gave the plaintiff fourteen days to explain and it was intimated therein that disciplinary action may be taken for the plaintiff's failure to explain or for giving an unsatisfactory explanation. Incidentally, that show cause letter bore reference to "enam buah rumah haram di Pandan New Village, Batu 7, Jalan Kangkar Tebrau, Johor Bahru" and it was argued vehemently by Mr. Alex Charles for the plaintiff that the error was significant and fatal. The plaintiff however was not misled by the location of the six illegal squatter houses for he conveniently in his letter dated 29 January 1983 as reproduced in the early part of this judgment described the exact location to be:

Batu 5 1/2, Jalan Tebrau, Pandan, Johor Bahru.

In my judgment, the plaintiff knew the location of the six illegal squatter houses to be at Batu 5 1/2, Jalan Tebrau, Pandan, Johor Bahru. It is germane to mention and to note that the notes of evidence recorded between 14 December 1994 to 12 September 1995 which contained the recorded evidence of the plaintiff did not show that the plaintiff was confused or did not know about the exact location of the six illegal squatter houses. The trial proceeded at that time on the understanding that the parties knew the exact location of the six illegal squatter houses. Dato' Ibak too referred to the exact location

as Batu 5 1/2, Jalan Tebrau, Johor Bahru. Even the minutes of the inquiry as reflected at pp. 21 to 23 under caption minute no: 4550 dated 17 July 1984 showed the exact location of the six illegal squatter houses as Batu 5 1/2, Jalan Tebrau, Johor Bahru. It was this address that the establishment committee (EC) arrived at at the end of the enquiry. And this was what Dato' Ibak said under re-examination. Be that as it may, from that minute no: 4550 dated 17 July 1984 it was revealed that there was a report by the Pengurus Daerah Kanan about the illegal supply of electricity to six squatter houses and this was as a result of the complaint received from Lee Sze Mong yet the report and the complaint were not furnished to the plaintiff. That minute also revealed that an investigation was conducted on the plaintiff as a result of the complaint and likewise the plaintiff was not furnished with a copy of that investigation. Flowing from this, it was argued that the plaintiff was not accorded the opportunity to confront the makers of the report, the complaint and the investigation. The answers to these allegations can be found in the evidence of Dato' Ibak and those answers bear repetition as they would clear the air once and for all. Thus, the notes of evidence at p. 134 onwards of Part D contained the following question and answer session that arose out of the cross-examination of Dato' Ibak:

Put: That at the inquiry on ... 17 July 1984 the plaintiff was not given all the allegations and complaints and reports made against him.

Answer: I disagree. We gave him everything.

Put: This report from the Ketua Jabatan was not at anytime given to the plaintiff.

Answer: I think and I know that the report was given to the plaintiff. We have been fair.

Dato' Ibak was grilled further under cross-examination. It makes for interesting reading.

Question: As chairman of the inquiry conducted on 17 July 1984 what were the documents that you relied upon on (at) the inquiry?

Answer: The report was submitted by the district officer Johor Bahru. We studied the report and we looked at the relevant provisions in the disciplinary procedures and from then on proceed(ed) to hear the case.

Put: Among the documents relied upon by you on 17 July 1984 was a report by the Pengurus Daerah Kanan, Johor Bahru.

Answer: I believe so.

Put: The second was a letter of complaint by Lee Sze Mong.

Answer: That could have been.

Put: The document relied upon was the report prepared by Puan Khalidah.

Answer: Puan Khalidah works in the district office in Johor Bahru and whatever comes from her would form part and parcel of the district manager's report.

The setting up of the disciplinary action was set up very professionally. I believe it was the case.

Put: At no time was the plaintiff given before 17 July 1984 or at the inquiry on 17 July 1984 the 3 documents I referred to earlier ie, pp. 13, 7, and 14 of bundle "IDP".

Answer: My Lord, we were informed during that investigation in this case that the officers in Johor Bahru had discussed with Ponnan about this matter and they had informed him that they would refer the matter to the head office in Kuala Lumpur. At the inquiry on 17 July 1984 we read the charges to the plaintiff and we showed him the documents (pp. 13, 7, 14 of bundle 'IDP') and we even told him that this matter had been referred to him by the Johor Bahru office before the Johor Bahru office referred the matter to the Kuala Lumpur office.

Put: That copies of documents at pp. 13, 7 and 14 of bundle 'IDP' were not given to the plaintiff.

Answer: My Lord, I am in no position to tell whether the Johor Bahru district office had handed these documents to Ponnan. But Ponnan admitted at the inquiry that he had received those documents. Incidentally at the inquiry Ponnan admitted to the charges. What else could I do. Everything was done fairly.

Put: Even if you as chairman had shown these documents (pp. 13, 7, and 14 of 'IDP') to the plaintiff it was meaningless to the plaintiff because he couldn't understand them.

Answer: My Lord, we read the charges, we read the letter of complaint. We explained the matter to him. He understood clearly at that time. He clearly understood Y.A. He admitted guilty to all the charges.

At p. 146 of the notes of evidence, Dato' Ibak testified solemnly under cross-examination that:

> All these documents in bundle 'IDP' were read and shown to him. We showed him all these documents in bundle 'IDP'. We showed him the whole thing.

Dato' Ibak continued at p. 151 of the notes of proceedings:

> I explained earlier this morning we showed to Ponnan all the documents and we read the documents to him. I believe the district manager in Johor Bahru have communicated and informed him about the allegations and the report. To be doubly sure we sought and we did explain to the plaintiff in detail about the documents.

Dato' Ibak was fully aware of his role and he expressed it in this fashion:

> It was my duty to be satisfied that the charges against the plaintiff was proven. As I said Ponnan willingly admitted to the charges. No one forced him.

Factually the present proceedings are not on all fours with *Rohana bte Ariffin & Anor v. Universiti Sains Malaysia* [1989] 1 MLJ 489 where the disciplinary authority there refused to accede to the requests of the applicants' solicitors and counsels for copies of certain documents and his Lordship Edgar Joseph Jr. J (now FCJ) in a well written judgment lucidly expounded the law by referring to certain authorities and his Lordship finally said:

> In my view, a reading of the above provisions makes it clear that in order that an applicant might be in a position to submit written representations ten days before the date of appearance before the disciplinary authority, he must be in possession of copies of all relevant documents and information relating to the charges brought against him a reasonable time before such date.

His Lordship Edgar Joseph Jr. J (now FCJ) continued further to say:

> Now, it is right to say, at the risk of being trite, that the right to be heard necessarily means the right to know the case against oneself. It is not difficult to cite an anthology of cases for this proposition.

In the present proceedings the testimony of Dato' Ibak laid to rest all doubts pertaining to all those documents which were alleged not to have been supplied to the plaintiff. Dato' Ibak categorically stated that all those documents were given to the plaintiff and even the plaintiff admitted that he received those documents. On this point, the defendant should succeed. Lord Denning speaking for the Privy Council in *BSS Kanda v. Government of the Federation of Malaya* [1962] MLJ 169 said:

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated

judgment of Lord Loreburn LC in *Board of Education v. Rice* down to the decision of their Lordships' Board in *Ceylon University v. Fernando*. It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough ... Applying these principles their Lordships are of the opinion that Inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in agreement with the view expressed by Rigby J in these words:

> In my view, the furnishing of a copy of the findings of the board of inquiry to the adjudicating officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of natural justice as to entitle this court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal.

The mistake of the police authorities was no doubt made entirely in good faith. It was quite proper to let the adjudicating officer have the statements of the witnesses. The Regulations show that it is necessary for him to have them. He will then read those out in the presence of the accused. But their Lordships do not think it was correct to let him have the report of the board of inquiry unless the accused also had it so as to be able to correct or contradict the statements in it to his prejudice.

There are dictas in earlier cases which categorically say that certain decisions by administrative authorities, like the Establishment Committee (EC) of which Dato' Ibak was the chairman, must be taken "fairly." Thus, for instance in *L.G.B. v. Arlidge* [1915] AC 120, Viscount Haldane LC said, particularly at p. 133 of the report, that the Board should act "judicially and fairly" although they need not observe the procedures of a court. Lord Shaw said that they must somehow "do their best to act justly, and to reach just ends by just means." In *Board of Education v. Rice* [1911] AC 179, Lord Loreburn LC in clear terms indicated that the Board was "under a duty to act in good faith, and to listen fairly to both sides." There are many other judgments which stress that natural justice do not require the scrupulous procedures of courts to be imposed on administrative authorities. The "duty to act fairly" has been implied by the courts in many cases outside immigration law. Examples of them are abound and suffice that references be made to *R. v. Birmingham City Justice, ex parte Chris Foreign Foods (Wholesalers) Ltd* [1970] 1 WLR 1428 (involving proceedings for the condemnation of unfit food); *Cinnamond v. British Airports Authority* [1980] 1 WLR 582 (involving an exercise of the

power to ban specific persons from *Heathrow Airport) and Bushell v. Secretary of State for the Environment* [1981] AC 75; [1980] 3 WLR 22; [1980] 2 All ER 608. Megarry VC in *McInnes v. Onslow – Fane And Another* [1978] 1 WLR 1520; [1978] 3 All ER 211 observed:

> I do not think that much help is to be obtained from discussing whether 'natural justice' or 'fairness' is the more appropriate term. If one accepts that 'natural justice' is a flexible term which imposes different requirements in different cases, it is capable of applying appropriately to the whole range of situations indicated by terms such as 'judicial', 'quasi-judicial' and 'administrative'. Nevertheless, the further the situation is away from anything that resembles a judicial or quasi-judicial situation, and the further the question is removed from what may reasonably be called a justiciable question, the more appropriate it is to reject an expression which includes the word 'justice' and to use instead terms such as 'fairness', or 'the duty to act fairly': see *In re H.K. (An Infant)* [1967] 2 QB 617, 630 per Lord Parker CJ; I*n re Pergamon Press Ltd* [1971] Ch. 388, 399 per Lord Denning MR; *Breen's* case [1971] 2 QB 175, 195 per Edmund Davies LJ ('fairly exercised'); *Pearlberg v. Varty* [1972] 1 WLR 534, 545 per Viscount Dilhorne, and at p. 547, per Lord Pearson.

The labels of "fairness" or "the duty to act fairly" have been adhered to by Dato' Ibak and under cross-examination at p. 153 under Part D he said passionately:

> I sat in the committee for a long time. There is not an iota of ill feeling in our heart and I say this for the rest of the establishment committee. There would not be any ill feeling towards our own staff.

Under re-examination, Dato' Ibak testified as seen at pp. 156 and 157 of Part D to the following effect:

> My enquiry was not like this court case now underway. Throughout the enquiry Ponnan was present.
>
> I ensured that Ponnan understood what transpired during the enquiry. I was satisfied. I gave him opportunity to defend himself whether by evidence or by submission. Ponnan admitted to all the charges. Maniam confirmed that Ponnan was the culprit. Maniam was Ponnan's witness.
>
> The first day, Murad came and he did not come the second day. Murad was the union representative.
>
> The matter of Murad as a union representative is the privilege of Ponnan. Up to Ponnan to decide whether that union representative should be present.
>
> I did ensure in writing that Ponnan could bring a representative if he wanted to.

> On the second day of the enquiry the plaintiff brought along a witness by the name of Maniam. Maniam spoke of the instruction by Ponnan to construct a service mains to those squatter houses.

Rule 17.1 of the Regulations states that:

> No Board employee may carry out any form of installation, alteration or removal of wiring or similar work if they do not possess the requisite technical qualification. Any such work carried out for a consumer or any other individual must be done as part of an employee's Board duties and with the sanction of the Responsible Authority. Such work, when properly authorized and undertaken forms part of the service of the Board as a public utility and under no circumstances whatsoever shall any employee or employees accept payment or reward, in cash or in kind, for carrying out such work.

Rule 17.2 of the Regulations states as follows:

> Any infringement of this section, no matter how slight, will be considered as a very serious disciplinary offence and will be treated accordingly.

The words "Responsible Authority" referred to in r. 17.1 of the Regulations have been defined in the Regulations to mean:

> ... member of the Board's staff from whom an employee shall from time to time receive instructions as to the duties he is required to carry out and to whom he is responsible for the proper performance of the said duties, provided that he shall not be of lesser rank than Division III or while being in the same rank he shall not be temporary or less senior to him.

These rules showed in no uncertain terms that the defendant took a serious view of unauthorized work and by r. 17.2 any infringement "no matter how slight" would be treated "as a very serious disciplinary offence." It was submitted that the plaintiff had infringed these rules and it was for that reason that the first disciplinary proceeding was initiated against him.

The letter dated 29 January 1983 from the plaintiff to the defendant as reflected at p. 12 of bundle "IDP" and which had been reproduced in the early part of this judgment played a prominent role in the present proceedings and in that letter the plaintiff either admitted or made the following assertions:

(1) The plaintiff identified himself as "Pekerja No: 5711".

(2) The letter was captioned as "Sambungan Bekalan Elektrik di Lot 188 Batu 5 1/2, Jalan Tebrau, Pandan, Johor Bahru." The plaintiff did not make any reference to "Bt 7, Jalan Kangkar Tebrau, Johor Bahru." The plaintiff too clarified and verified the location in the course of the trial particularly under cross-examination when he said at pages 11 and 12 of Part C:

Yes, I provided the heading at p. 12 of 'IDP' as Batu 5 1/2, Jalan Tebrau, Pandan, Johor Bahru.

Yes, the whole inquiry at Kuala Lumpur was held in regard to the Batu 5 1/2, Jalan Tebrau, Pandan, Johor Bahru.

This piece of evidence put to rest the doubts in relation to the location of the six illegal squatter houses.

(3) It was stated that the applicants had questioned the plaintiff in regard to the re-supply of electricity that had been delayed. But this was entirely beyond the jurisdiction or authority of the plaintiff to handle and there was also no indication that this matter had been referred to the seniors.

(4) The plaintiff had proceeded to inspect the deposit payment at the office and this was not part and parcel of his duties as demonstrated and exemplified by Khalidah bte Haron (SD1) ("Khalidah").

(5) The plaintiff claimed that the applications of the applicants had been approved in all aspects other than the issuance of Borang LLN 98 – and this was the form that authorised the issue of meters.

(6) The plaintiff employed the words "saya sanggop untuk memesang balik bagi kerja di rumah di atas" but this was clearly outside his scope of duty.

(7) The plaintiff claimed that he could not have known that the houses were "rumah haram" as it was an application for re-supply of electricity.

Clearly from the tenor of the plaintiff's letter dated 29 January 1983 the plaintiff played a major role in orchestrating the supply of electricity to the six illegal squatter houses. The plaintiff was the sole actor in this escapade. There was no indication whatsoever in the said letter that the matter had been referred to an appropriate officer like Khalidah or even his immediate superiors. There was no mention at all in the said letter that Khalidah or other superior officers were involved. It seemed, and it is a correct inference to draw, that the plaintiff handled all the matters by himself and gave unto himself some assumed authority without the blessings of his superiors. The letter established beyond doubt that the plaintiff gave supplies to six illegal squatter houses on his own accord. Thus, it was not surprising that the plaintiff, at the first available opportunity, admitted his guilt and this can easily be seen from the evidence of Dato' Ibak. That first disciplinary proceeding sealed the fate of the plaintiff when the latter on his own accord admitted to the charge. Evidence wise, Khalidah testified as follows (at pp. 16 and 17 of Part D):

There were complaints in regard to the 6 cases and therefore investigations were carried out and we discovered these 6 cases were not our old customers but new customers or new supplies. After investigations these 6 cases should

be Bekalan Baru and not Ujian Semula (re-testing). I personally went to these 6 places. I went to a place after the Pandan Bridge opposite side of the road of Yeo Hiap Seng. As you go along that road you have to turn to the left, its about 200 meters away from the main road by the river bank and there these 6 houses were located.

The main road is Jalan Tebrau and I have to turn to the left and some 200 meters away are these 6 houses. The bridge string across Pandan river.

At p. 29 of the notes of evidence of Part D, Khalidah's evidence was indeed damning. She testified as follows:

It was an Ujian Semula and Ponnan was not supposed to instal the meters and he did so. Ponnan was the culprit. We had a complaint that illegal houses were given electricity supplies, so based on the investigation it was found out that we were given false information on the application forms.

The forms only stated re-testing which got nothing to do with new supply. Upon probing through the case we found that the 6 meters were installed by Ponnan. All the 6 meter forms were signed by Ponnan. We cannot give electricity supply to illegal houses. The information contained in the application forms was a lie from the very beginning. It was chopped as re-wiring whereas it should be for new supply.

New supplies of electricity to the 6 illegal houses were not possible unless approved by the Majlis Daerah of that area.

In doing what he did Ponnan acted wrongly. Salah bukan kerja dia.

The relevant applications for the supplies of electricity to the six illegal squatter houses can readily be seen in bundle "IDTP" at pp. 1 to 18 and in bundle "IDTP" at pp. 1 to 4 and collectively these forms may be referred as the "application forms." Khalidah's evidence in regard to the application forms may be summarised in this manner. "UJIAN SEMULA" was treated as routine as there was an existing supply except that the supply was to be resumed due to disconnection. If the application was for fresh supply then the application would be scrutinised carefully from various aspects. All supply matters were under the control and authority of the consumer engineer – in this instance it was under the charge of Khalidah, she being the consumer engineer.

As stated earlier Khalidah had acted on a complaint from a member of the public. Dutifully she went to investigate and discovered that unauthorised supplies were given to six houses on Lot 188 identifiable by LLN's ledger numbers 29/6/25-2 or 3 or 4 or 5 or 6 or 7. It must be emphasised that ledger numbers were the governing factors to identify the consumers.

At the material time, squatter houses or "rumah haram" in Johor Bahru were not entitled to electricity supplies. The brunt of Khalidah's evidence and the overall picture that came out of it showed the culpability of the plaintiff. For fear of repetition, Khalidah testified that she would not have given the supplies to the six houses had she knew that these houses were "rumah haram." As the evidence unfolded, the culprit was non other than the plaintiff who stooped so low as to use Khalidah's name in his nefarious activity.

On 17 July 1984 the plaintiff appeared before the Establishment Committee (EC) chaired by Dato' Ibak who was appointed to look into disciplinary matters. What transpired before Dato' Ibak on 17 July 1984 had been documented and as I said it was in the form of minute No: 4550 as seen at pp. 21 and 23 of bundle "IDP". Dato' Ibak acknowledged that minute No: 4550 was the minutes of the Establishment Committee (EC) for the hearing of the plaintiff's matter and it reflected whatever took place on that day. In the words of Dato' Ibak: "I say the minute was an overview perspective of what transpired at the enquiry. You can't write everything during the enquiry." Dato' Ibak stressed that the minutes of the enquiry before the Establishment Committee (EC) would be kept and that the proceedings were conducted not exactly like the proceedings in a court of law. Nevertheless, Dato' Ibak made doubly certain and ensured that the plaintiff was given a full opportunity to defend himself. In fatherly style, Dato' Ibak conducted the enquiry and this can readily be seen at p. 145 of the notes of proceedings at Part D where it was recorded as follows:

> In fact before the plaintiff leaves the room I asked him, as it is my usual style, that I ask:
>
> Is there anymore thing that you want to tell us ?.

The plaintiff was also informed that he had a right of appeal against any decision. But Dato' Ibak testified that to the best of his knowledge the plaintiff did not appeal in regard to the demotion in rank. The plaintiff was not alone in his hour of need. He knew that he had the opportunity of appealing. He even admitted at p. 36 of the notes of evidence at Part A that he had the benefit of advice from the trade union. Of crucial importance, the plaintiff too had the benefit of a lawyer in the person of Mr. Razak Ahmad. In fact, the law firm of Mr. Razak Ahmad sent a letter dated 9 May 1985 to the defendant as reflected at p. 24 of bundle "IDP" and requested the latter to re-instate the plaintiff to his former rank and in the event of a failure to do so, legal proceedings would be instituted forthwith. The enquiry, according to Dato' Ibak, was "impeccably done" with "fairness throughout". Maniam was the plaintiff's witness and in the words of Dato' Ibak as reflected at p. 154 of the notes of evidence in Part D:

> Maniam came to clarify matters and he was not the sole factor for the reduction in rank of Ponnan.
>
> During the whole proceedings there was no real denial by Ponnan for his action. All he was saying was that he did not know that those houses were rumah haram.
>
> Maniam was supposed to help the plaintiff, to clarify the plaintiff's position. But Maniam in the end informed the committee that he erected the service on the instruction of Ponnan.

Earlier on at p. 145 of the notes of proceedings in Part D, Dato' Ibak testified:

> As chairman of the disciplinary committee it is a standard practice by the establishment committee to call the person and brief him in regard to the charges against him with all the supporting documents. We allow the members of the committee to ask questions and we give chance to the plaintiff to answer them.

Dato' Nik Mohamed bin Nik Abdullah (SD3) ("Dato' Nik Mohamed") gave his version of what transpired at the first disciplinary proceeding and this was what he said as reflected at p. 171 of the notes of proceedings at Part D:

> When I attended the enquiry with Puan Khalidah, Ponnan the plaintiff was called in. It happened a long time ago. I do remember one thing if I say here. Ponnan was a bit hostile that morning at the enquiry. That's all I could remember.
>
> Correct neither I nor Puan Khalidah asked Ponnan any question.

From the plaintiff's record of service, it showed clearly that he rose up the ladder the hard way. He started his career with the defendant as a labourer and rose up to be the juruteknik rendah, tingkatan biasa. It was submitted that the plaintiff had a low educational level and emphasis was made that the plaintiff was not conversant in both the Bahasa Malaysia and the English language. Under re-examination, at page 56 of the notes of evidence in Part A the plaintiff testified that he only had standard 5 education at a Tamil school. A very pathetic state of affair. But the notes of evidence recorded at p. 39 of Part A bore these remarks:

> (Saksi nampak nya faham Bahasa Inggeris, dia boleh jawab sebelum Jurubahasa terjemahkan soalan itu).

Then in the course of examination-in-chief, with another fresh counsel by his side, the plaintiff was very courageous and showed his prowess in scrutinising the documents at pp. 1 to 8 of bundle "IDTP" before answering questions advanced by his counsel. Is this the conduct of a simpleton or one who is illiterate? The plaintiff should have considered himself lucky to have moved

up the career ladder with the defendant. In other jurisdictions, especially across the causeway, a standard 5 qualification will get him no where. After being demoted and without appealing against that demotion the plaintiff felt ashamed to be a sweeper with the defendant. The plaintiff testified at p. 37 of the notes of proceedings in Part A:

> I did not say that I don't want to work. I can work in other job but not as a sweeper.

At pp. 38 and 39 of the notes of proceedings in Part A, the plaintiff testified:

> On 1 December 1984 when I reported to work after the first inquiry my status of work at that time was a sweeper. On that day onwards I refused to perform my duty as a general worker particularly as a sweeper.

Had the plaintiff continued with his work as a sweeper with the defendant dutifully he would, as Dato' Ibak said, in due course be reinstated to his former job. This was not to be. All this is purely history. The truth of the matter was that the plaintiff was too high strung to be a sweeper.

It was argued that the plaintiff could not be expected to understand his rights to call for or require all documentary evidence made against him to be made available nor was the plaintiff in a position to exercise his rights to call for or require all the persons who have prepared reports or made complaints or carried out investigations against him to be made available. It was further argued that during the inquiry on 17 July 1984 all those who sat in judgment were the senior officers in the defendant and because of that it was said that the defendant could not move, talk or raise any query unless directed by the chairman in the person of Dato' Ibak. Further, it was submitted that the plaintiff did not obtain the benefit of any assistance from anyone by way of an explanation. It was further submitted, as I understood it correctly, that Khalidah and Dato' Nik Mohamed should not sit in judgment against him. Flowing from this, it was argued that the plaintiff was denied a fair hearing. Unfortunately for the plaintiff the evidence went the other way round. Contrary to the plaintiff's contention that Khalidah and Dato' Nik Mohamed sat in the panel of the Establishment Committee (EC), exh. D17 of "IDTP" showed the panel members for the Establishment Committee (EC) that convened on 17 July 1984 to be:

Dato' Ibak	-	Timbalan Pengurus Besar (Pentadbiran) Pengerusi.
Encik Abdul Rashid bin Ahmad	-	Pengarah Pentadbiran Kakitangan.
Encik Mahmud Badri bin Hj. Basir	-	Setiausaha.

Encik Mansor bin Latif	-	Ketua Akauntan.
Encik Yeo Hock Keng	-	Pengurus Perniagaan.
Encik Hakkam Ali bin Butta	-	Timbalan Pengarah Pentadbiran Kakitangan (Perkhidmatan dan Tugas-Tugas Am).
Encik Ismail Azman bin Omar	-	Penolong Pegawai Kakitangan (Perjawatan) Setiausaha.

Even Dato' Ibak himself asserted to the same effect in his examination-in-chief as seen at p. 110 of the notes of evidence in Part D. In fact Khalidah and Dato' Nik Mohamed were present on 17 July 1984 as witnesses. Khalidah testified at p. 32 of the notes of proceedings at Part D to the following effect:

> ... I was called to Kuala Lumpur for the disciplinary inquiry. The session which I attended Ponnan was present.
>
> I was questioned by the board of inquiry in the presence of Ponnan, Ponnan too was questioned. Ponnan brought a witness this was what I could remember and that witness was also questioned.
>
> After the inquiry there was a finding and Ponnan was demoted. I believe at the inquiry Ponnan admitted to the charges.

On the question of "fairness" at the enquiry, Khalidah was questioned in this way as seen at p. 73 of the notes of evidence at Part A:

> **Put:** None of these people were made available to the plaintiff at the inquiry
>
> **Answer:** They were made available during the inquiry. I can remember all the people attended. The mains gang and the LLN staff, the poles and the wiremen attended the inquiry. Therefore I disagree with you.

As to the guilt of the plaintiff, this was what Khalidah said under cross-examination as can be seen at pp. 78 and 79 of the notes of evidence at Part D:

> Here I was asked yesterday as to why I found Ponnan guilty. This is one of the guilts which he had done. He did the test which he is not authorised to do and he signed on behalf of the Pembantu Teknik or foreman or the authorised tester which he is not authorised.
>
> At p. 3 of "IDTP" the pesanan jangka – meter order form dated 3 April 1982. Here again through the investigation of this form Ponnan is wrong by installing the meter and signed kerja dibuat oleh dan dimeteraikan which meant he used the seal meant for others and he was not authorised to use the seal and this

meant he was wrong. The initial next to the words 'Dimasukkan Dalam Buku Kerja Luar' I consider it to be made by a meter examiner for the purpose of acknowledgement that a new consumer has been installed. At p. 4 of 'IDTP' is the meter reader reading book, their purpose is to take records of the reading for every month.

I would like to say that I find Ponnan wrong by referring to p. 3 'IDTP', p. 7 'IDTP', p. 11 'IDTP', p. 14 'IDTP', p. 17 'IDTP' and p. 3 'IDTP'. Signatures for approvals of meter orders were sought from 3 different authorised personnels. All requests dated 3 April 1982.

This is not a normal practice. The request must be sent simultaneously because it is for the same purpose and for the same area and dated the same time. What has been done is a normal practice. What I can recall Ponnan approached me on 2 occasions and he asked me to sign on the pretext to help a customer to speed up process. Ponnan lied and he deceived me.

The plaintiff on the sly used Khalidah's name and this was discovered by her. She testified at p. 81 of the notes of evidence at Part D:

During my investigation the standby gang was reluctant to carry out the job until Ponnan used my name to say it is under my instruction.

It is pertinent to point out that Khalidah was present at the inquiry on only one occasion. She asserted this fact categorically when she was questioned in this way as seen at pp. 90 and 91 of the notes of evidence at Part D:

Put: On 17 July 1984 (date of inquiry) when the plaintiff was called in the inquiry room were you seated in the inquiry room.

Answer: I was there once. I do not know the date.

In the course of cross-examining Khalidah it was put to her that she sat in the disciplinary inquiry as a panel member. She categorically denied it and this was the exchange which she gave in response as seen at p. 105 of the notes of proceedings at Part D:

Put: You were not competent to sit in the subsequent disciplinary inquiry.

Answer: I never sat in the disciplinary inquiry. I was not an authorised person to sit there.

In regard to the six illegal squatter houses, this was what Khalidah said under re-examination as reflected at p. 106 of the notes of evidence at Part D:

The relevant houses to this inquiry are those set out in 'IDTP' pp. 1 to 18 and 'IDTP' pp. 1 to 4; all in 6 houses.

> During the course of this trial the 6 houses mentioned in 'IDTP' p. 1 to p. 18 are the 6 houses described as rumah haram.
>
> There were no other houses involved in respect of the disciplinary inquiry and at the hearing before Y.A. today.

The plaintiff was most unhappy at the outcome of the inquiry. He took it badly and he seemed to blame Khalidah for his misfortune. Under re-examination at p. 107 of the notes of evidence at Part D, Khalidah testified as follows:

> The plaintiff was walking/passing outside my office with his gun. It was a shot gun. It happened once Y.A. Ponnan pointed the shot gun at me while smiling. A harrowing experience.
>
> When the plaintiff was demoted this incident of the plaintiff holding the shot gun before me occurred. I was scared. I did not report this to the police. I am a local person, I don't want to aggravate the matter. It can be worse. I left the matter as it was. I hoped that it would cool off. It was nothing personal between him and me. I was just writing a report as to what had happened. I was doing my job. Ponnan cheated at his job. Ponnan authorised something which he was not authorised to do. It was wrong. He did an illegal job. He even admitted to me that he committed those illegal works as set out in the charges.

Dato' Ibak too clarified the presence of Khalidah and Dato' Nik Mohamed at the inquiry on 17 July 1984 in this way (as seen at p. 145 of Part D of the notes of proceedings):

> My Lord, the presence of Nik Mohd and Puan Khalidah were to assist the committee to clarify certain points in the report.

Dato' Nik Mohamed explained his presence in the inquiry under cross-examination in this way. At p. 169 of the notes of evidence at Part D, Dato' Nik Mohamed said:

> I was not present at all times in the inquiry but only at a certain portion of time.

Dato' Nik Mohamed was more uncertain as he was grilled under cross-examination as to his presence in the inquiry. Thus, at p. 170 of Part D of the notes of evidence Dato' Nik Mohamed testified:

> I may have been there. But as I said earlier I can't remember which date it was.
>
> I don't think the enquiry lasted one day. On one of the days, I attended the enquiry I can't remember when was it.

> I can't remember whether I attended the enquiry on 17 July 1984 when the plaintiff was reduced in rank to that of a labourer on a higher salary scale.
>
> I can't remember whether I was present at the enquiry on 28 January 1984.

Again at p. 171 of the notes of proceedings as seen at Part D, Dato' Nik Mohamed continued in regard to his attendance at the inquiry in these words:

> When I attended the enquiry Dato' Ibak was the chairman of the disciplinary board. When I was present Puan Khalidah too was present at the enquiry. I can't remember the other members of the enquiry board.

The presence of Dato' Nik Mohamed and Khalidah as witnesses were put to rest by the evidence of Dato' Nik Mohamed who testified that both of them did not ask the plaintiff any question. How could both of them parry questions with the plaintiff as they too appeared as witnesses and not as panel members of the Establishment Committee (EC)?

The allegation that the plaintiff was immobilised during the inquiry as he could not move, talk or raise any query unless directed by Dato' Ibak was against the grain of the available evidence. If it was sought to paint the plaintiff as a weak and feeble individual who was about to be slaughtered by the Establishment Committee (EC), it was a mere wishful thinking. In fact, the plaintiff was not as meek as a lamb at the enquiry. He was in the words of Dato' Nik Mohamed "a bit hostile" (p. 171 of the notes of evidence at Part D). It can safely be said that the plaintiff was able to communicate with the panel members. His hostility must have given him that dutch courage to speak up and fight for his rights. Dato' Ibak was very tactful and this redeeming feature in him can be seen in his evidence. Dato' Ibak was also very thoughtful. The plaintiff was given all the opportunities to defend himself. The plaintiff also tendered a witness in the person of Maniam. Dato' Ibak's evidence as narrated in the early part of this judgment gave a bird's eye view of the "fairness" and "the duty to act fairly" which he meted out to the plaintiff in conducting that inquiry. In short, Dato' Ibak had ensured that the plaintiff understood what was going on. Indeed, there was no room for biasness or partiality as alleged by the plaintiff and there was no particular reason for the Establishment Committee (EC) to act to the detriment of the plaintiff unless thre was evidence to implicate him to the charge. Here, there was more than ample evidence to implicate the plaintiff with the charge. This was my judgment and I so hold accordingly.

In *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasokan Polis & Ors* [1995] 1 MLJ 308 CA, Gopal Sri Ram JCA writing for the Court of Appeal had this to say at p. 316 of the report:

> The categories of procedural fairness are not closed and the procedure adopted in a particular case may be fair or otherwise according to its own facts. The measure of fairness afforded to a particular plaintiff is a question of fact and of degree that is to be judged according to our own standards and values and not according to the standards and values of a foreign judge, however imminent. That is not to say that we cannot obtain valuable assistance from other sources: but in the final analysis, it is a question that is to be decided according to the Malaysian concept of fairness.

The rules of natural justice have traditionally been regarded as comprising the rules *audi alteram partem* and *nemo judex in causa sua*. These rules are far reaching. These rules would apply in various situations and in different fact situations. Thus, it would apply to require the maker of a decision to give prior notice of the decision to the persons affected by it, and opportunity accorded to those persons to make representations, and to disqualify the decision-maker from acting if he has or she has a direct pecuniary or proprietary interest or that the decision maker be or might otherwise be biased. Historically these rules were closely tied to decision making in the courts but they have since been extended to apply to administrative authorities and to administrative decision – making. It is in these areas that difficulties have arisen. The courts have in these areas insisted and prescribed a basic duty to act fairly and it may simply mean to refrain from any abuse of discretion. However, in the present case there was no difficulty to hold that there was fairness being exercised by Dato' Ibak all the way. To him the enquiry was conducted in impeccable style, a style that comes within the purview of the concept of natural justice.

Next, it was submitted that the plaintiff was punished twice after the first disciplinary proceeding: a final warning and a reduction in rank. As I said there was no appeal filed by the plaintiff even though he had the benifit of legal advice and the irresistible conclusion that can be arrived at from this would be this. That the plaintiff accepted the decision of the Establishment Committee (EC). This was my judgment and I so hold accordingly.

The Second Disciplinary Proceeding

Under this head, the relevant Rules would be the National Electricity Board of the States of Malaya (Conduct and Discipline) Rules 1983 vide P.U.(A) 277 ("NEB rules"). Rule 21(4) of the NEB rules states as follows:

> Where an officer is absent for a period exceeding seven working days in any calendar month, or exceeding seven working days consecutively, that fact shall forthwith be reported by the Head of Department to the Disciplinary Authority together with the dates and the circumstances of the absence any further information which may be required concerning the officer. Upon consideration

of the said report, the Disciplinary Authority may then institute disciplinary action against the officer in accordance with r. 27 with a view to dismissal or reduction in rank. Pending the decision of the Disciplinary Authority, the officer shall not be entitled to any salary or remuneration for the period of his absence. This includes public holidays found in the period of his absence.

and using this as a leverage, Mr. S. Pathmanathan assisted by Mr. Haris Fadzillah bin Samin argued that the plaintiff was not entitled to payment for the period of his absence. This was an apt submission. No employer can fairly be expected to pay an employee for services which were not rendered at all.

From the available evidence, the plaintiff had on 13 April 1985 unilaterally terminated his contract of service with the defendant by stopping work. The pill of demotion must have been too bitter for the plaintiff to swallow. The defendant wrote a letter dated 1 July 1985 and that letter showed to the world at large, so to speak, that the plaintiff did not turn up for work beginning from 13 April 1985 and it was couched as a show cause letter worded in this fashion as reflected at p. 25 of bundle "IDP":

Pengurus Daerah Kanan,
LLN Johor Bahru.
JBU 15/30/5711/142

Encik S. Ponnan,
Pekerja No: 5711,
LLN Johor Bahru.

Melalui : Pen. Jurutera
(Pengguna),
LLN Johor Bahru.

1 Julai 1985

Melarikan Diri Dari Bertugas

Adalah dimaklumkan bahawa mulai 13.4.85 hingga sekarang tuan telah didapati tidak hadir bekerja tanpa memberi apa-apa kenyataan pada hari tersebut.

Dengan ini tuan adalah dikehendaki memberi penjelasan secara bertulis dalam tempoh 7 hari dari tarikh surat ini di tulis menerangkan sebab-sebab mengapa tuan telah melarikan diri dari bertugas.

Sekian,

Sgd. (Illegible)
(Abdul Aziz bin Ismail)
PENGURUS DAERAH KANAN
JOHOR BAHRU.

Under cross-examination, the plaintiff was shown the letter dated 1 July 1985 and he categorically admitted receiving it. At p. 42 of the notes of evidence at Part A, the plaintiff's words ring loud and clear:

I received 'IDP 25'. I did not reply to 'IDP 25'.

In due course, the defendant sent a letter dated 7 October 1985 as shown at pp. 26 and 27 of bundle "IDP" but the letter was returned undelivered. The letter was written by Khalidah in her capacity as a disciplinary officer and that letter contained the charge against the plaintiff for not attending work from 13 April 1985 onwards. For clarity that letter is reproduced hereinunder:

JBU. 01/5/1A/22
7 Oktober 1985

Encik S. Ponnan,Pekerja No: 5711,
Lembaga Letrik Negara,
Johor Bahru.

Melalui : Pen. Jurutera (Pengguna),
LLN Johor Bahru.

Pertuduhan Bagi Maksud Mengambil Tindakan Tatatertib

Satu laporan telah diterima memaklumkan bahawa tuan telah didapati tidak hadir bekerja dari 13.4.1985 hingga sekarang tanpa apa-apa kenyataan dan kebenaran cuti daripada Ketua Jabatan tuan. Oleh itu tuan telah melakukan satu kesalahan di bawah kaedah 21, kaedah-kaedah 1983.

Tuan adalah dengan ini di minta memberi jawapan kepada pertuduhan yang dikemukakan dengan memberi sebab-sebab mengapa tindakan tatatertib untuk tuan di buang kerja tidak sepatutnya di ambil terhadap tuan. Tuan diberi tempoh 14 hari dari tarikh surat ini di terima untuk mengemukakan hujjah-hujjah tuan. Sekiranya tuan tidak memberi sebarang jawapan dalam tempoh masa yang ditetapkan itu, tuan akan di anggap sebagai tidak hendak membela diri dan perkara ini akan terus diputuskan di atas keterangan-keterangan yang ada sekarang ini sahaja. Tindakan ini akan dibicarakan oleh Jawatankuasa Kecil Tatatertib Negeri Johor.

Sila tuan akui penerimaan surat ini.

'BERKHIDMAT UNTUK NEGARA'

Sgd (Illegible)

(Khalidah binti Haji Haron)
Pegawai Tatatertib,
Lembaga Letrik Negara,
Johor Bahru.

KHH/hm

s.k. Pengerusi,
J/K Kecil Tatatertib Tempatan,
(Kawasan Selatan - Johor),
LLN Johor Bahru.

Dengan ini saya akui penerimaan surat ini pada _____.

(S. Ponnan)
Pekerja No: 5711.

A registered letter dated 9 October 1985 enclosing the letter dated 7 October 1985 was sent to the plaintiff and this can readily be seen at p. 28 of bundle "IDP" which was worded thus:

JBU. 15/30/5711/145

9 Oktober 1985 BERDAFTAR

Encik S. Ponnan,
22, Jalan Yahya Awal,
Johor Bahru.

Pertuduhan Bagi Maksud Mengambil Tindakan Tatatertib

... Bersama-sama ini disertakan surat dari Pegawai Tatatertib, LLN Johor Bahru ekoran dari keengganan tuan menerima surat tersebut yang diserahkan kepada tuan tempoh hari.

Sekian untuk tindakan tuan.

'BERKHIDMAT UNTUK NEGARA'

Sgd (Illegible)
(Mohd Juraimi bin Ibrahim)
Pen. Jurutera (Pengguna),
Lembaga Letrik Negara,
Johor Bahru.

MJ1/hm.

Khalidah, the maker of the letter dated 7 October 1985, had this to say about that letter (as seen at p. 33 of the notes of evidence at Part D):

> Pages 26 and 27 of bundle 'IDP' was written by me to Ponnan and I wrote this letter in my capacity as a pegawai tatatertib. At para 1 it was clear that Ponnan absented from work from 13.4.1985 till today.
>
> Here there was an indication that a disciplinary action would be taken against him. After this letter, I submitted the case to the Jawatankuasa Kecil Tatatertib Tempatan. We tried to deliver this letter (pages 26 and 27 of 'IDP') by hand and by register but he refused to receive the said letter. At that time Ponnan was living in front of our office just across the road. He knew he was the guilty party – the culprit. He refused to accept the letter. Despicable behaviour.

Khalidah continued in similar vein as seen at pp. 33 and 34 of the notes of evidence at Part D:

> There was no difficulty in handing the letter at pp. 26 and 27 of bundle 'IDP' but Ponnan simply refused to accept it. We sent this letter at pp. 26 and 27 of bundle 'IDP' through his head of section and I was told that this letter was not delivered to Ponnan; we posted the letter, registered the letter to his house and I was told he refused to accept the letter. We again asked our security officer to send personally to his house to him and I was told that he took the letter and threw it back to the security officer.

In plain language, the letter which contained the charge which was posted, and registered and sent by hand to the plaintiff reached its destination but the plaintiff refused to accept the same. The letter dated 9 October 1985 bore the plaintiff's address at No: 22, Jalan Yahya Awal, Johor Bahru and that address was just opposite the defendant's office, within sight and within walking distance. The plaintiff's address was a stone's throw away from that of the defendant. This was what the plaintiff said in his testimony (at p. 39 of the notes of evidence at Part A):

> All this while even till today I have been living at no: 22, Jalan Yahya Awal. My house exactly opposite the LLN gate.

Again at p. 40 of the notes of evidence at Part A, the plaintiff testified:

> All this while my correct address is No: 22, Jalan Yahya Awal. All letters sent to me must be received by me including AR Registered letters.

The plaintiff's address was known to the defendant and letters sent to that address was simply ignored by the plaintiff. The inference from the surrounding circumstances must be made. It can safely be inferred that the plaintiff knew what was in store for him when he refused to work from 13 April 1985. There was no necessity for the defendant to resort to r. 21(5) or even r. 21(6) of the NEB rules by gazetting the absence of the plaintiff and

thereafter deeming the plaintiff as being dismissed. This was a classical case of the plaintiff playing cat and mouse game.

The defendant took no chances and they deployed Mohd. Noor bin Abdul Fatah (SD4) ("Mohd. Noor"), a security guard, to deliver the letter to the plaintiff. Mohd. Noor dutifully carried out his assignment. The plaintiff received the letter but arrogantly threw it away. At p. 187 of the notes of evidence at Part D, Mohd. Noor testified:

> Kejadian serah surat pada 2.11.1985 dan saya pergi rumah Ponnan di Jalan Yahya Awal dan disitu rumah Ponnan dekat dengan pejabat saya. Rumah Ponnan di seberang jalan daripada pejabat.
>
> Pada pukul 11.00 pagi 2 November 1985 saya pergi rumah Ponnan dan saya serah satu surat kepada dia.
>
> Ponnan terima surat daripada saya dan kemudian dia campakkan ke tanah. Surat ini di utarakan oleh saya kepada ketua saya di LLN. Saya tidak tahu kenapa Ponnan campak surat itu. Ponnan kata:
>
> > Saya tidak mahu terima surat ini. Apa nak jadi, jadilah.
>
> Lepas itu untuk elakkan daripada pertengkaran saya balik ke pejabat. Saya khuatir Ponnan akan gaduh dengan saya. Saya tidak mahu jadi pergaduhan pertengkaran. Muka Ponnan serious.

The encounter with Mohd. Noor was confirmed by the plaintiff. This was what the plaintiff said as seen at p. 43 of the notes of evidence in Part A:

> I met Mohd. Noor yesterday at the corridor of the High Court. I have known him before. On 2 November 1985 Mohd. Noor went to my house and handed to me 'IDP 26'.
>
> Now, witness said Mohd. Noor brought one letter but he cannot remember whether it was 'IDP 26'.
>
> Mohd. Noor handed 'IDP 26' to me but I refused to accept the letter.
>
> **Question:** Did you accept 'IDP 26' and throw it away?
>
> **Answer:** No, I didn't.
>
> **Question:** How did you know of the contents of 'IDP 26'?
>
> **Answer:** I just refused to accept 'IDP 26'. I was told the letter 'IDP 26' came from LLN.

On 16 May 1986 the local Disciplinary Sub-Committee sat and recommended the dismissal of the plaintiff. At p. 17 of bundle "IDP", the panelist for that local Disciplinary Sub-Committee comprised of the following personalities:

(a) Dato' Nik Mohamed - Pengerusi.
Pengurus Kawasan Selatan.

(b) Tuan Hj. Abdul Aziz bin Ismail - Ahli.
Pengurus Daerah Kanan.

(c) Encik Yong Mian Thong - Ahli.
Jurutera Perancang Kanan
(Johor).

Under cross-examination, Dato' Nik Mohamed testified at p. 179 of the notes of evidence in Part D to this effect:

> The Jawatankuasa kecil proceeded with the inquiry against the plaintiff for failure to turn up for work.
>
> Page 17 of 'IDP' is the minit mesyuarat of which I chaired. We were informed at the hearing that a registered letter was delivered to the plaintiff but was returned. Subsequently, another attempt was made by sending/despatching the letter normally by our security man to the plaintiff and we were further informed that the plaintiff refused to accept the letter and threw it to the ground. So basing on this we were made to believe that the plaintiff did not wish to have anything to do with the case let alone defend himself. And as such we proceeded with the inquiry and made our decision.

At p. 180 of the notes of proceedings at Part D, Dato' Nik Mohamed further testified:

> I say that there is no prejudice here. The first case has got relevance to the second especially concerning the sentence that has been put forth upon the plaintiff after the first case – in that there is a clause which says that if Ponnan were to repeat the same offence of being involved in other offences or doing some other mischief he would be dismissed from service without any further notice. This can be seen at p. 23 of 'IDP' especially the last sentence.
>
> I acted under r. 21.1 - D18 p. 12 of L 86. At all material times the LLN knew where the plaintiff was staying. When the officer is absent and cannot be traced a letter by AR Registered to be sent as seen at r. 21(5) (p. 12 of L 86) but at the same time it does not prevent LLN from sending an AR Registered letter to the plaintiff knowing the situation at that time NEB took action to send the letter by AR Register so that they have a proper record that it has been delivered.
>
> In this case the plaintiff was able to be traced. We know where he was. We were sure that he was there. And so it does not come under r. 21(5) p. 13 of L 86 where it spoke of the plaintiff as being 'absent and untraceable'. Furthermore Y.A. the notification was not gazetted as required here because attempt was made to deliver the letter to the plaintiff by hand earlier. We have sent letters twice to the plaintiff and he refused to be associated with the case.

Under such circumstances we have no other choice except to proceed without his presence.

I disagree with the point of prejudice levelled against me.

In regard to his absence for work that was a deliberate act on the plaintiff's part.

On receipt of the recommendation by the local Disciplinary Sub-Committee, the Jawatankuasa Tatatertib deliberated and by letter dated 26 August 1987 as seen at p. 20 of bundle "IDP" directed the plaintiff to be dismissed effective 13 April 1985. That letter was worded thus:

LLN.15/30/5711/ SULIT 26 Aug 1987

Pengerusi,

Jawatankuasa Kecil Tatatertib (Kawasan Johor),
d/a Pengurus Kawasan (Selatan),
LLN, Johor Bahru.

KEPUTUSAN JAWATANKUASA TATATERTIB BERKENAAN DENGAN SESUATU KES YANG DIRUJUKKAN OLEH JAWATANKUASA KECIL TATATERTIB

Jawatankuasa Tatatertib setelah mengkaji keputusan Jawatankuasa kecil Tatatertib (Tempatan) berkenaan dengan pertuduhan ke atas Encik S. Ponnan, Pekerja No: 5711, di bawah kaedah 21, kaedah-kaedah Lembaga Letrik Negara, Tanah Melayu (Kelakuan & Tatatertib) 1983, memutuskan bahawa keputusan Jawatankuasa kecil Tatatertib tersebut adalah sah dan diterima, dan dengan ini beliau adalah dikenakan hukuman buang kerja berkuatkuasa mulai 13 April 1985 iaitu tarikh beliau mula tidak hadir bertugas secara terus menerus.

Sekian.

Sgd (Illegible)
Dato' Mohd Jalaluddin bin Zainuddin
PENGURUS BESAR
Merangkap Pengerusi
Jawatankuasa Tatatertib
Lembaga Letrik Negara.

s.k. Encik S. Ponnan
P/No: 5711

Melalui : Pengurus Daerah Kanan,
LLN Johor Bahru.

Sila sampaikan keputusan ini kepada pekerja tersebut dan uruskan borang kewangan yang tertentu.

s.k. Setiausaha, LLN Ibu Pejabat.

s.k. Ketua Akauntan, LLN Ibu Pejabat.

s.k. LLN 015/11/5 (Johor).

By letter dated 5 June 1986, the plaintiff appealed against that dismissal as seen at p. 30 of bundle "IDP". On 25 April 1987 the plaintiff filed the writ of summons – the subject matter of the present suit.

The plaintiff claimed that after he was reduced in rank as a labourer, to be precise as a sweeper, he reported for duty and worked. The plaintiff sought to give an impression of continuity in his employment with the defendant. But alas, this cannot be reconciled with the official records and the actions that resulted in the dismissal of the plaintiff. It was for the plaintiff to prove that he was continuously working up to the year of 1991 as claimed by him in his evidence – where at p. 41 of the notes of evidence at Part A the plaintiff said:

I followed fellow workers (after 1 December 1984) to work i.e. outside the LLN quarters and the LLN offices. All these within working (walking) distances. My seniors used to ask me why I refused to work and I told them I refused to work as a sweeper and I can do any other job. This was the position in 1984, 1985, 1986, and 1987 and also in 1988, 1989 and 1990. I stopped entirely in 1991. All these while I was not paid by the defendant.

Question: Are you telling the truth?

Answer: Yes, I am telling the truth.

Question: You are on oath.

Answer: I know that.

Indeed if what the plaintiff said was the truth he could have easily put in a rebuttal evidence of his absence from work since 13 April 1985 by calling a co-worker as a witness. But the plaintiff did not proceed on this line of attack. The plaintiff proceeded with and placed importance on the punch cards marked as exhs. P1 to P8. The defence witnesses have affirmed that the punch cards have no significance at all.

Now, it is germane to examine the punch cards.

(1) Exhibit P1 was for the period in December 1984. From 16 to 31, December 1984 it was written therein that the plaintiff was on leave.

(2) Exhibit P2 was for January 1985. From 1 to 24 January 1985 it was written therein that the plaintiff was on leave.

(3) Exhibit P3 was for February 1985.

(4) Exhibit P4 was for the period March 1985. Of significance was a bold hand written note therein which reads:

> Cuma punch kad saja tapi tak pernah datang bertugas.
>
> Sgd (Illegible)
> 30.5.85.

(5) Exhibit P5 was for July 1985.

(6) Exhibit P6 was for August 1985.

(7) Exhibit P7 was for the period in September 1985.

(8) Exhibit P8 was for October 1985.

No punch card was produced for the month of April 1985 and Dato' Nik Mohamed did not know as to its whereabouts. The plaintiff alleged that he was working in 1986, 1987, 1988, 1989 and 1990 but no punch cards were produced. The plaintiff too did not call a co-worker to testify that he actually worked during those years. The remarks written on exh. P4 must have been the *modus operandi* of the plaintiff after his demotion. The plaintiff knew his days with the defendant are numbered and his testimony at p. 18 of Part A of the notes of evidence merit reproduction. It was worded thus:

> After 1986 I was never taken back into the service.

Indeed if by 1986 the plaintiff was no longer in the employment of the defendant then it was a lie when the plaintiff said that he continued working for the defendant for the years 1987, 1988, 1989, and 1990. The truth of the matter was that the plaintiff did not turn up for work from 13 April 1985 for if he did the matter would be relayed to Dato' Nik Mohamed. The said Dato' categorically stated at p. 183 of Part D of the notes of proceedings:

> If the plaintiff had turned up for work, I would have been informed somehow. No reason whatsoever to sack the plaintiff. We never victimised staff. We needed the services of everyone.

Pages 174 and 175 of Part D of the notes of evidence of Dato' Nik Mohamed should be reproduced as it centred on punch cards. This was what Dato' Nik Mohamed said:

> I don't know who prepared the punch card and supervising the attendance of the plaintiff coming to office.

From P5 and P6 I can only say that the plaintiff or anybody else, I don't know, had punched the cards.

It is against regulation in NEB/LLN for any one else to punch the punch card for some one else.

I have no idea as to what had happened to the plaintiff's punch cards for the months of April, May and June 1985.

I am not sure why the cards for July and August 1985 were prepared for the plaintiff.

Question: No disciplinary action taken against the plaintiff for arranging for someone to punch his cards for him?

Answer: If he had done that he was very lucky that he was not charged. If he had been found guilty of asking somebody else to punch his cards NEB would institute proceedings against him.

I don't know whether disciplinary action was taken against the plaintiff for asking someone to punch his cards.

He was lucky he got away with this one.

All communications to the plaintiff are always channelled to his head of division.

Mr. S. Patmanathan, the learned counsel for the defendant, rightly submitted that the defendant's stand was that the plaintiff had abandoned his employment since 13 April 1985 and the plaintiff had not disproved it otherwise. It was part and parcel of my judgment and I so hold that the plaintiff absented from work from 13 April 1985 onwards. After his demotion, the plaintiff was no longer interested in working for the defendant.

The declaratory reliefs sought by the plaintiff were basically equitable in nature. It is said that the courts of equity are the courts of conscience. It was the duty of the plaintiff in seeking these declaratory reliefs to be honest and forthright. There were marked inconsistences in the evidence of the plaintiff and they may compendiously be categorised in these fashions:

(1) On 13 April 1996 (p. 84 of Part C) the plaintiff was being cross-examined and he was confronted with his testimony which he gave on 27 April 1995 (p. 41 of Part A). His reply was a reflection of himself as a blatant liar. The evidence went like this:

Question: In 1986, 1987, 1988, 1989 and 1990 you said you went with fellow LLN workers to the worksite but today you said otherwise?

Answer: When I gave evidence on 27 April 1995 I was represented by another counsel. So a different story was told. I might have said the wrong thing on 27 April 1995.

(2) On the question of hours of work which the plaintiff put in, he was confronted with his later evidence (at p. 85 of Part C) and his earlier evidence given on 27 April 1995 (at p. 41 of Part A) and the answers elicited therein gave rise to a possible claim for wages for work done which was not pleaded at all and it would also be inconsistent with the prayers sought for by the plaintiff at paras. (e), (f) and (g) of the amended statement of claim.

The plaintiff's evidence recorded on 27 April 1995 went like this:

Question: You stated that you work in 1986, 1987, 1988, 1989 and 1990 at 7am as reflected at pp. 40 and 41 of the notes of proceedings dated 27 April 1995 and went back at 2pm. Today you said you went to the punch card and returned immediately?

Answer: The evidence I gave on 27 April 1995 is in relation to the years 1984 and 1985 only. During these 2 years I went to work at 7am and used to come back at 2pm.

Question: What about the years subsequent to that meaning 1986 to 1990?

Answer: I might have given a wrong answer when I testified in court on 27 April 1995 in relation to the years 1986, 1987, 1988, 1989 and 1990.

Question: What do you mean when you said in the notes of proceedings at p. 41 recorded on 27 April 1995 that:

> I stopped entirely in 1991.

Answer: It meant I did not go to work completely. I was supposed to retire in 1990 and there would be no work for me to do after that.

(3) The plaintiff claimed that he told his senior officers of his refusal to do work for five years when he gave his evidence on 27 April 1995; but he changed this version later as can be seen at pp. 86 and 87 of Part C. The evidence went like this:

Question: You said in your evidence on 27 April 1995 that you met your seniors and you refused to work as a sweeper for the years 1986, 1987, 1988, 1989 and 1990 but yesterday and today you said you did not see your seniors because when you saw that your punch cards were not there then you went back?

Answer: My seniors used to ask me why I refused to work in the years 1984 and 1985 only.

(4) The plaintiff claimed that he worked without pay for six long lingering years. This was an impossible contention and a total lie. At p. 48 of Part A of the notes of proceedings, the evidence went like this:

Question: Since 1 December 1984 what was your means of livelihood ?

Answer: I used to go to the theatre ie, Rex Theatre to wash cars. I earned about RM5 to RM10 per day. I have not tried to work in an electrical job after 1 December 1984. It is not proper for me to work in the electrical division since I am still working for LLN. I was not getting any pay for 6 years. I never went back to LLN for my salary; I refused to accept the pay. All those 6 years I refused to accept my pay since I was demoted. From 1 December 1984 till 1990 I never worked nor did the job of a Junior Technician. I in fact did the job as a labourer.

Now, if the plaintiff worked at the theatre to wash cars and earned that kind of money since 1 December 1984, then the irresistible inference was that after punching his punch cards the plaintiff did not work with the defendant. It was his *modus operandi* to simply punch in and work elsewhere.

(5) In regard to the fixing of meters, the plaintiff gave contradictory evidence. During the proceeding on 27 December 1995 (at p. 26 of Part B) the plaintiff testified as follows:

Question: In respect of the 6 houses in the charge as per 'IDP' muka surat 11, did you supply any meters to them?

Answer: No, I did not supply any meters to 6 houses as stated in 'IDP' muka surat 11.

A different version was advanced by the plaintiff when he testified on 20 March 1996 as can be seen at p. 23 of Part C:

Question: You said you did not supply meters to these 6 houses. Now you said you fixed meters. Could you explain the discrepancy?

Answer: Saya nafikan. Saya yang memasang meter rumah-rumah di Batu 5 1/2, Jalan Pandan.

Question: You now deny that you did say that you did not supply meters to these 6 houses as stated in 'IDP' muka surat 11 ?

Answer: Saya tidak pernah kata demikian Y.A.

(6) In the face of overwhelming evidence especially the evidence of Dato' Ibak, the plaintiff merely put up a defence of bare denial in the context of his right to defend himself before the Establishment Committee (EC). At p. 10 of Part B, the evidence went like this:

Question: In the disciplinary inquiry at the LLN at Kuala Lumpur, you were allowed to be represented and defend the charges against you?

Answer: No, Y.A. I was not allowed to have a representative or (to) defend myself.

The approach to be adopted when faced with a witness who has lied on one or two points has been lucidly stated by his Lordship Syed Othman J in *Tua Kin Ling v. Public Prosecutor* [1970] 2 MLJ 61 in the following words:

> No doubt the rule is that if a witness had lied on one or two points it does not necessarily follow that his whole evidence should be rejected. (*Khoon Chye Hin v. Public Prosecutor* [1961] MLJ 105). But it is the duty of the court to sieve the evidence and to ascertain what are the parts of the evidence tending to incriminate the accused which could be accepted.

I have done just that. I have gone in depth in regard to the whole substratum of the case. Several pertinent and germane passages of the witnesses have been reproduced to highlight and to show the flow of evidence as they appeared in cold print. The inconsistencies in the evidence of the plaintiff cannot be reconciled with the mass of evidence that unfolded in the course of the trial. The plaintiff saw it fit to give two versions on a single issue and this can and must be attributable to the change of counsel. The double versions would do the plaintiff no good at all. With the change of counsel, the plaintiff took the stand once again. That gave rise to those glaring and persistent contradictions. It was an intolerable attitude to take the stand and lie. The reason for the dismissal of the plaintiff at the second disciplinary proceeding was obviously the refusal of the plaintiff to work. The opportunity to be heard does not mean the right to be heard orally and the question of legal representation does not arise at all and no breach of natural justice could flow from it (*Nijar Singh v. Government of Malaysia & Anor* [1974] 1 MLJ 138; and *Zainal bin Hashim v. Government of Malaysia* [1979] 2 MLJ 276). The plaintiff, from the available evidence, refused to be associated with the second disciplinary proceeding. Attempts to serve the letters proved futile. The evidence of Mohd. Noor showed the attitude of the plaintiff towards the defendant. Undue emphasis was made to the Sijil Perkhidmatan Setia (exh. P16) which the plaintiff received for having served the defendant for twenty-five years and it was said to be an irony of fact. Khalidah had this to say of exh. P16 as seen at p. 108 of Part D:

> P16 is given to a long service award for being in Tenaga Nasional for 25 years. It is not a commendation. Just being there for 25 years you will get (P16).
>
> Nothing spectacular. A deadwood would also get the commendation. TEN has now revised this silly practice.

There was nothing spectacular about the plaintiff. He knew that he supplied electricity to the six illegal squatter houses and he admitted it all to Dato' Ibak. The silly practice of awarding commendation certificate for 25 years service must be put to a stop by the defendant.

Would a reasonable body have come to the same conclusions as the Establishment Committee (EC) and the local Disciplinary Sub-Committee? The decisions of these disciplinary committees can be upset if it is proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. The Wednesbury principles of unreasonableness as pronounced by Lord Greene M.R. in *Associated Provincial Picture Houses v. Wednesbury Corp.* [1948] 1 KB 223; [1947] 2 All ER 680 merit reproduction:

> I am not sure myself whether the permissible grounds of attack cannot be defined under a single head. It has been perhaps a little bit confusing to find a series of grounds set out. Bad faith, dishonesty – those of course, stand by themselves – unreasonableness, attention given to extraneous circumstances, disregard of public policy and things like that have all been referred to, according to the facts of individual cases, as being matters which are relevant to the question. If they cannot all be confined under one head, they at any rate, I think, overlap to a very great extent. For instance, we have heard in this case a great deal about the meaning of the word 'unreasonable'.
>
> It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting unreasonably.

Dato' Ibak considered all the matters that were brought to his attention. No bones were spared. He directed himself properly in law when he said that he was satisfied that the charges against the plaintiff was proven. Dato' Ibak's hands were tied and he did his level best in the face of the admission of guilt by the plaintiff. To Dato' Ibak everything was done fairly. I have painstakingly

perused through the evidence with a toothcomb and there was not a tinge of unreasonableness left for me to consider. Everything was done aboveboard. The same applies equally to Dato' Nik Mohamed. As explained earlier Dato' Nik Mohamed had no choice but to proceed without the plaintiff since the latter saw it fit not to be involved in a matter of which he should be involved. Attempts to hand and transmit the letters proved futile.

Jackson J in *Shaughnessy v. United States*, 345 U.S. 206 (1953) said:

> Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.

Natural justice is a phrase attributable to certain fundamental rules which are crucial and necessary to the proper exercise of power that they are now projected from the judicial to the administrative sphere. In simple language, the phrase covers two rules: first, that a man may not be judge in his own cause; and secondly, that a man may not be condemned unheard.

Lord Reid in *Ridge v. Baldwin* [1964] AC 40 at 64 observed:

> In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist. The idea of negligence is equally insusceptible of exact definition ... and natural justice as it has been interpreted in the courts is much more definite than that.

In *Metropolitan Properties (F.G.C.) Ltd v. Lannon* [1969] 1 QB 577, Lord Denning MR remarked that the court:

> does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people.

and his Lordship further continued to say that:

> Nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough ... . There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not inquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right – minded people go away thinking: 'the judge was biased'.

In my judgment there was no real likelihood of bias in the present case. Both Dato' Ibak and Dato' Nik Mohamed conducted the disciplinary proceedings fairly without favouring one side at the expense of the other. Justice was seen to be done in the present case and no one could say otherwise. Dato' Ibak was very sympathetic towards the plaintiff. Dato' Nik Mohamed went about his duties professionally and fairly. All the principles of natural justice enunciated by eminent judges before me when applied to the factual matrix of the present case produced one result. Fairness. This was my judgment and I so hold accordingly.

In the course of writing this judgment, I had occasion to read the judgment of Peh Swee Chin FCJ in *Ng Hock Cheng v. Pengarah Am Penjara & Ors* [1997] CLJ JT (19) where his Lordship writing for the Federal Court disagreed with the majority decision of the Court of Appeal in *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771 and his Lordship had this to say:

> On appeal to the Court of Appeal, (quoting here only one of several points decided there, as being relevant to the said question in the instant appeal), it was held in a majority judgment in allowing the appeal that the disciplinary authority must, when deciding what punishment it ought to impose on the particular public servant, act reasonably, and fairly, that if it acted arbitrarily or unfairly or imposed a punishment that was disproportionate to the misconduct, its decision on the punishment was liable to be quashed or set aside. The Court of Appeal then by a majority substituted the order of dismissal in effect with an order that the senior assistant of the primary school be reduced in rank and salary to those of an ordinary teacher.
>
> It was held by the dissenting judge that the court should not substitute its own view as to which was the appropriate penalty for the employee's misconduct, and it was held further whether the punishment should be a dismissal or a lesser penalty like a reduction in rank was not for the court to say.

Having thus disagreed with the majority decision of *Tan Tek Seng*, his Lordship Peh Swee Chin FCJ continued in serious vein:

> If the public officer succeeds in so impugning, any order of punishment including an order of dismissal can be declared invalid or void, and such order being so declared void, is deemed not to have been made at all or is deemed to have been only purportedly made previously. But if the public officer fails to so impugn, any order of punishment remains and there should be no further review on such order of punishment.

His Lordship Peh Swee Chin FCJ, continued further to say:

> It cannot be denied further that the disciplining of a public officer by his department head, is part of the function of the executive branch of the government and any usurpation by a court will be viewed with something very much more than disfavour even though the judiciary is the judicial branch of the government as well as an institution which belongs to the people. To repeat, a court intervenes only on the nature and manner of accusation against a public officer as distinct from a consequential punishment as explained above.

Finally, his Lordship Peh Swee Chin FCJ said:

> Thus, we are of the opinion that on the narrow point in question, the majority judgment in *Tan Tek Seng (supra)* cannot stand though we express our agreement with the minority judgment on the same narrow point.
>
> We once again revert to the instant appeal. Likewise we did not interfere with the order of dismissal despite what were said to be mitigating circumstances. The appellant would have to leave for greener pastures. We therefore dismissed the appeal with costs.

Two observations must be made. At High Court level the case of *Ng Hock Cheng v. Pengarah Am Penjara And 2 Others* [1995] 2 CLJ 273 was decided by me. Likewise, at High Court level the case of *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan* [1995] 2 MLJ 476; [1995] 2 AMR 1913; [1995] 3 CLJ 279 was decided by me. In *Ng Hock Cheng (supra)*, I did say at p. 281 to p. 282 of the report:

> *Bolton's* case [1994] 1 WLR 512 cannot be used as a carta blanche to interfere with the sentence of an inferior tribunal as the facts here are poles apart from that of *Bolton.* In *Bolton's* case, a solicitor had misappropriated funds of a Building Society whereas, here, the plaintiff as a Government servant borrowed massively and was indebted and failed to report his actual indebtedness to Dato' Ibrahim and, on his own volition, had himself declared a bankrupt, a conduct which would bring the public service into disrepute and in breach of para 4(2)(d), 4(2)(g), 4(2)(f), and 4(2)(i) of the General Orders. It is pertinent to point out that the plaintiff like any other Government Officer is governed by the General Orders.

In *Tan Tek Seng's* case, I unreservedly said:

> In my judgment, a finding that the charge was proved under s. 173A(ii)(b) of the CPC was tantamount to a finding of guilt but the court would not be inclined to record a conviction before binding over the plaintiff conditionally thereto. And since there was a finding of guilt, it would squarely fall within the ambit of the definition of the word 'conviction' in para 3 of the GO and, consequently, the Setiausaha, Suruhanjaya Perkhidmatan Pendidikan, Malaysia was correct when he decided to dismiss the plaintiff. The dismissal against the plaintiff was part and parcel of the several forms of punishment as stipulated in para 36 of the GO.

Now, applying the decision of his Lordship Peh Swee Chin FCJ in the case of *Ng Hock Cheng* the punishments imposed on the plaintiff in both the disciplinary proceedings which were affirmed by me, must also be affirmed by the Court of Appeal as everything was done above board with fairness being meted out to the plaintiff in large doses. A judicial review of the plaintiff's case cannot but come to that conclusion. After all as his Lordship Peh Swee Chin FCJ said in Ng Hock Cheng:

> Just like a professional body being the best tribunal to judge the seriousness of misconduct of its members, in a similar vein, an employer, including a government is the best person to judge similarly the seriousness of misconduct of an employee.

For these reasons, I dismissed the plaintiff's case with costs.

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